

JUL 27 2016

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***Via Certified Mail –
Return Receipt Requested***

July 22, 2016

Ramana Chinnakotla, Public Works Director
Head of Agency
Redwood City - Public Works Department
1400 Broadway Street
Redwood City, CA 94063

Melissa Stevenson Diaz, City Manager
Members of the City Council
c/o City Clerk
Redwood City
1017 Middlefield Road
Redwood City, CA 94063

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Chinnakotla, Head of Agency, Ms. Stevenson, and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of Redwood City's sewer collection system.

River Watch hereby places Redwood City ("the City"), as owner and operator of its sewer collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional

Water Quality Control Board, San Francisco Bay Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the City's sewer collection system pipelines to a water of the United States.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that violation of a permit limit places a polluter in violation of the CWA.

River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A). Note that the City, while a signatory to a NPDES permit governing the operation of the Silicon Valley Clean Water ("SVCW") wastewater treatment facility for the treatment of its sanitary sewage, this permit does not cover discharges from the City's sewer collection system.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specified standard, limitation, or order alleged to have been violated.*

River Watch has identified discharges of sewage from the City's sewer collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a) which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful."

2. *The Activity Alleged to Constitute a Violation.*

River Watch contends that from July 20, 2011, to July 20, 2016, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

Collection System Surface Discharges Caused By Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above ground from the collection system prior to reaching the SVCW treatment facility, are alleged to have occurred both on the dates identified in California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports and on the dates when no reports were filed by the City, all in violation of the CWA.

A review of the CIWQS Spill Public Report – Summary Page identifies the "Total Number of SSO locations" as **157**, with **377,077** "Total Vol of SSOs (gal)". Of this total volume, the City claims **297,782**, or **78%** of the total, reached a surface water. However, a review of the records indicates a much greater percentage of SSOs reached a drainage to a surface water or a surface water itself. Critically, of the **377,077** gallons of sewage spilled, only **91,168** gallons, or just **24%**, was recovered. The remainder was discharged into the environment where it posed both a nuisance pursuant to Calif. Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

The below listed violations are reported by the RWQCB and evidenced in the CIWQS SSO Reporting Program Database Records:

- 21-** SSOs reported as reaching a water of the United States, as evidenced in CIWQS and records of the City. CIWQS event ID#s: 779261, 816714, 811743, 804128, 822793, 812834, 805280, 776700, 812448, 778106, 812449, 808198, 802972, 798107, 796208, 807297, 808778, 798023, 775723, 825301, and 825657.¹

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), in that they are discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

Releases Reported. The City's aging sewer collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure resulting in SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Redwood Creek, Cordilleras Creek, and the San Francisco Bay – all waters of the United States.

As recorded in CIWQS Public SSO Reports, the City's sewer collection system has experienced at least **25** SSOs between July 1, 2011 and July 1, 2016, with a combined volume of at least **48,176 gallons – 35,761 gallons** of which were reported as having reached surface waters. A few examples are identified below:

- March 26, 2012 (Event ID # 779261) - an overflow estimated at 6,800 gallons occurred at 610 Woodside Road as a result of grease deposition. According to the report, all 6,800 gallons discharged into Redwood Creek.
- December 26, 2014 (Event ID # 811743) - an overflow resulting from root intrusion occurred at Stulsaft Park with 4,150 gallons reaching the Jefferson Branch of Redwood Creek.
- March 9, 2016 (Event ID # 822793) - an overflow occurred at a manhole located in the roadway in front of the property located at 2538 Eaton Avenue. A total of 3,000

¹ See

https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportId=sso_overview_region&reportAction=generate®ion=2&agency=Redwood%20City&collSys=Redwood%20City%CS&count=23&sortcol=1&printfriendly=y&curpage=0&pagesize=25; July 20, 2016

gallons were estimated as both the amount of the spill as well as the amount reaching Cordilleras Creek. The City's SSO Report downplays the environmental impacts stating "visual inspection did not show any impacts to surface waters" and "crew did not notice any grey water or negative impact to aquatic life."

Note that while some spills occurred in areas which were dry at the time of the spill, the discharged pollutants remain on the surface of the land and enter receiving waters following rainfall or flooding.

Further, this Notice includes multiple violations that may have occurred on the same day but were reported by the City to CIWQS as a single violation. Among many unanswered and incomplete responses, the City's SSO Reports frequently state "null" in response to Question 12 ("Number of appearance points") and Question 44 ("Explanation of Volume estimation used"). Finally, River Watch contends the City is underestimating impacts to surface water. Of the 25 reported violations identified on CIWQS, only 1 was sampled for pollutants (Event ID # 776700).

Discharges to Surface Waters. River Watch's expert believes that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters; and those reported as partially reaching a surface water did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the SSO Reports filed by the City state the estimated start time of the SSO as the same time as, or very soon after, the reporting party first noticed the SSO. Studies have shown that most SSOs are noticed significantly after they have begun.

River Watch believes many of these spills were far more significant than the City's Reports disclose due to the unlikely time estimations. For example, the SSO Report from a spill event on June 26, 2013 (Event ID # 796208) lists the estimated start time at 09:55 a.m., agency notification at 09:56 a.m., operator arrival time as 10:09 a.m., and spill end time as 10:10 a.m. This spill occurred at 195 Alameda, but very little detail is given in the City's report. The total volume is estimated at only 150 gallons with none recovered, and 150 gallons reported as affecting Redwood Creek.

In describing a spill at St. Francis and Quartz Street on January 4, 2014 (Event ID # 802972), the City's SSO Report identifies the estimated SSO start time as 12:30 p.m. on January 4, 2014, the notification time as 1:00 p.m. on January 7, 2014, the operator arrival time as 10:30 a.m. on January 17, 2014, and the spill end time as 10:35 a.m. on January 17, 2014. The City reported an estimated total spill volume of 300 gallons, all of which were recovered, and also that 300 gallons spilled into the Emerald Branch of Redwood Creek.

River Watch contends the City is grossly underestimating the incidences and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ (“Statewide WDR”) governing the operation of sanitary sewer systems. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the Impacts of a SSO. The EPA’s “*Report to Congress on the Impacts of SSOs*” identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within areas of the City’s SSOs. Neighboring waterways include sensitive areas such as Bair Island State Marine Park, the San Francisco Peninsula Watershed, Redwood Shores Ecological Reserve, and San Francisco Bay. There is no record of the City performing any analysis of the impact of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is sampling very few violations of its reported SSOs.

Compliance with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit. River Watch contends the City fails to adequately comply with the discharge prohibitions in the MS4 permit (Order No. R2-2009-0074; NPDES Permit No. CAS612008) which states, in Section A. Discharge Prohibitions, Subsection A.1: “The permittee, shall, within their respective jurisdictions, effectively prohibit the discharge of non-stormwater (materials other than stormwater) into, storm drain systems and watercourses. NPDES-permitted discharges are exempt from this prohibition. Provision C.15 describes a tiered categorization of non-stormwater discharges based on potential for pollutant content that may be discharged upon adequate assurance that the discharge contains no pollutants of concern at concentrations that will impact beneficial uses or cause exceedances of water quality standards.” In practice, the discharge of any SSO to any storm drain system or watercourse under the City’s jurisdiction violates this subsection of the City’s MS4 NPDES permit.

B. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is also a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewer collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., of the City's sewer collection system into groundwater hydrologically connected to surface waters including, but not limited to, tributaries of San Francisco Bay such as Redwood Creek and Cordilleras Creek. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.²

Evidence of exfiltration can also be supported by reviewing mass balance data, "inflow and infiltration" ("I/I") data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City is a violation of the NPDES permit and thus the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the City's sewer collection system to determine the location and extent of exfiltration.

C. Impacts to Beneficial Uses

San Francisco Bay has many beneficial uses as defined in the RWQCB's Basin Plan. SSOs reaching these waters cause prohibited pollution by unreasonably affecting these beneficial uses. Bair Island State Marine Park is a 3,000-acre series of wetlands located along the Bay shoreline in Redwood City. Bair Island is part of the larger Don Edwards San Francisco Bay National Wildlife Refuge which supports over 150 species of birds and wildlife including several pods of seals who nurse their newborns on the Island. Bair Island is an important ecological wetland providing critical habitat for the endangered California clapper rail and the salt marsh harvest mouse. It also serves as an important stop for birds on the Pacific Flyway.

The San Francisco Peninsula Watershed is home to the federally endangered mission blue butterfly, San Bruno elfin butterfly, San Francisco garter snake, the federally threatened

² See the Report of Human Marker Study issued in July of 2008 and conducted by Dr Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

California red-legged frog, steelhead trout and marbled murrelet. Redwood Shores Ecological Reserve is a 268-acre salt marsh providing feeding areas for rails and herons. The mud flats within the marsh provide foraging areas for a wide variety of shorebirds such as the white-tailed kite and short-eared owl.

San Francisco Bay supports 50 species of mammals, 33 reptiles, over 250 species of birds and 94 species of fish. Endangered species supported by the Bay include the mountain beaver, San Joaquin kit fox, California brown pelican, California least tern, northern spotted owl, peregrine falcon, western snowy plover, Alameda striped racer, San Francisco gartersnake, California tiger salamander, delta smelt, coho salmon, tidewater goby, ohlone tiger beetle, Mt. Hermon beetle, delta ground beetle, zayante band-winged grasshopper, San Francisco lacewing, bay checker spot butterfly, callippe silverspot butterfly, myrtle's silverspot butterfly, lange's metalmark butterfly, smith's blue butterfly, and black abalone.

River Watch is understandably concerned regarding the effects of both surface and underground SSOs on critical habitat in and around the diverse and sensitive ecosystem of Redwood City.

3. *The Person or Persons Responsible for the Alleged Violation.*

The entity responsible for the alleged violations identified in this Notice is Redwood City and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. *The Location of the Alleged Violation.*

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewer collection system as further described in this Notice.

Redwood City, encompassing 19 square miles, is located in San Mateo County between San Carlos to the north and Atherton and Menlo Park to the south. The City's service area comprises 3 distinct areas. The main part of the City includes its downtown as well as residential areas. The communities of Seaport/Pacific Shores and Redwood Shores are located on the City's eastern boundary along the San Francisco Bay.

The City's wastewater is treated at the SVCW wastewater treatment facility. SVCW is owned and operated under a joint powers authority with 4 member agencies: the cities of Redwood City, Belmont, and San Carlos, and the West Bay Sanitary District (serving Menlo Park, Atherton, Portola Valley, and part of East Palo Alto and San Mateo County).

The City's sewer collection system consists of approximately 192 miles of gravity and force mains and 31 pump stations (26 located in Redwood Shores and the remaining 5 in Seaport/Pacific Shores). Most of the gravity piping system is composed of 6- to 10-inch diameter pipe. The SVCW provides wastewater treatment and maintains the force main which conveys the City's sewer flows from the Maple Street Pump Station (under SVCW jurisdiction) to the treatment facility. Following treatment, wastewater is discharged into San Francisco Bay.

The City currently performs sewer cleaning a minimum of once every 4 years and assigns preventive maintenance to sewer mains susceptible to root intrusion, grease accumulation, and debris deposition as a preventive measure to stop sewer line blockages and overflows from happening. OASIS, computerized maintenance management system software, is used by the City to track preventive maintenance activities on pipelines.

Based on the level of sewer rehabilitation and replacement identified by the City through 2012, an estimated 25% of the sewer collection system pipelines would have to be rehabilitated or replaced over the next 25 years. The City anticipates the level of sewer rehabilitation would proceed indefinitely due the collection system's state of deterioration.

The Redwood Creek and Steinberger Slough confluence physically defines the Inner Harbor Plan area. Redwood Creek flows from the north side of the City under U.S. Highway 101, combines with Steinberger Slough, and then flows into San Francisco Bay. Redwood Creek and Steinberger Slough, within the extents of the Inner Harbor Specific Plan area, include riprap protection and marine docks. Redwood Creek is owned by the City. Ownership of Steinberger Slough's is split between Graniterock and the City. Both the Creek and Slough are within the jurisdiction of the California Department of Fish and Wildlife, RWQCB, U.S. Army Corps of Engineers, and State Lands Commission. The Inner Harbor Specific Plan area stormwater infrastructure includes a combination of overland flow, gravity mains, force mains, and pump stations. Pumping is required due to the combination of tidal action and low elevation. This neighborhood is part of 4 watersheds: Maple Street (gravity outfall), Maple Street K-Mart (pump station), Oddstad (pump station), and Seaport Boulevard (pump station).

5. *The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred.*

The range of dates covered by this Notice is July 20, 2011 through July 20, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. *The Full Name, Address, and Telephone Number of the Person Giving Notice.*

The entity giving notice is California River Watch, referred to throughout this notice as “River Watch,” an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with City staff to tailor remedial measures to the specific operation of the City’s sewer collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television (“CCTV”) inspections for sewer lines; manhole inspections for structural defects; and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program (“PACP”) rating system, developed by the National Association of Sewer Service Companies.

- B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.
- C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective, could allow exfiltration to that surface water. Whether a line is “sufficiently proximate” will depend upon a number of factors including: age, composition and PACP rating of the sewer line in question; the nature of the defect; soil types; groundwater patterns; and the like.
- D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
 - 5 – Most significant defect
 - 4 – Significant defect
 - 3 – Moderate defect
 - 2 – Minor to moderate defect
 - 1 – Minor defect.

II. REMEDIAL MEASURES

River Watch believes the following remedial measures may be necessary to bring the City into compliance with the CWA and the Basin Plan:

- A. Sewer Collection System Investigation and Repair
 - 1. The repair or replacement, within two (2) years, of all sewer lines in the City’s sewer collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV’d within the past ten (10) years and were rated as Significantly Defective (PACP 5 or 4) or given a comparable assessment.
 - 2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV’d during the past ten (10) years.
 - 3. Within two (2) years after completion of the Surface Water Condition Assessment above, the City will:

- i. Repair or replace all sewer lines found to be Significantly Defective;
 - ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced; sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the discharger shall complete such repair or replacement within two (2) years after the last CCTV cycle.
4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.
5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:
 - i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered.
 - ii. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

- iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.
2. Pursuant to the City's legal obligation under SWRCB Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements For Sanitary Sewer Systems*, Section D.7.v., the City shall have a qualified biologist develop and implement an adequate sampling program to determine the nature and impact of all SSOs.
3. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification shall be given by the City to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.
4. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:
 - i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;
 - ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
 - iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;
 - iv. Upon replacement or repair of any part of the sewer lateral;
 - v. Upon issuance of a building permit with a valuation of \$25,000.00 or more; or
 - vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks and/or the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact River Watch within **20 days** after receipt of this Notice Letter to initiate a discussion regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


Jack Silver

JS:lhbm

Service List

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